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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO LAMAR HARRISON,

Defendant and Appellant.

E062157

(Super.Ct.No. RIF1402109 &
RIF 1409821)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Reversed.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina, Meagan Beale, and Annie Featherman Fraser, Deputy Attorneys General, for Plaintiff and Respondent.

Prosecutors charged defendant and appellant, Ricardo Lamar Harrison, with two counts of willful infliction of corporal injury on a spouse or cohabitant. (Pen. Code, § 273.5, subd. (a), counts 1 & 2.) The prosecution alleged defendant had suffered and served prison terms for two prior convictions of burglary of a dwelling, which constituted prison priors within the meaning of section 667.5, subdivision (b)¹ and serious or violent felonies within the meaning of sections 667, subdivisions (c) and (e)(2)(A) or 1170.12, subdivision (c)(2)(A).

Defendant signed a felony plea form stating he would plead guilty to both substantive counts and receive a total sentence of six years in state prison. The form indicated defendant was making a “plea to the court,” and the prosecution did not sign it. The plea form did not list enhancements as admitted, but indicated for each sentence that it would be doubled. Defendant later pled guilty to committing domestic violence on two occasions but did not admit his prior convictions constituted prison priors or prior serious or violent felonies.

At the sentencing hearing, the trial court imposed the midterm of three years in state prison doubled to six years on each domestic violence count, with the second sentence to run concurrent with the first. The court explained it doubled the sentences because of a strike prior. The minute order shows the court struck the prison priors and designated the case a second strike case. However, the abstract of judgment records no enhancements.

¹ Unlabeled statutory citations refer to the Penal Code.

Defendant appeals. Initially, he requested that we order the trial court's minute order be corrected to show defendant did not admit to a prior serious or violent felony so he will receive conduct credit at the correct rate. The People responded by arguing the plea constituted an unlawful judicial plea bargain. The People also contend defendant did not admit a strike prior and requested remand for the trial court to determine whether the prior serious or violent felonies were to be admitted or dismissed and to allow the trial court to resentence accordingly. In his reply brief, defendant agreed the sentence must be reversed on the basis that defendant did not admit the strike prior, joined the request that we remand to the trial court, but asked that we limit the trial court on remand to resentencing defendant in accordance with the plea agreement or allowing defendant to withdraw his guilty plea.

We hold the trial court did not engage in judicial plea bargaining, but entered an indicated sentence predicated on the mistaken understanding that defendant had admitted two prior serious or violent felonies. Because defendant did not admit the prior serious or violent felonies, we reverse the judgment as to both sentence and conviction and remand for further proceedings.

I

FACTUAL BACKGROUND

Defendant injured his significant other on two separate occasions, and the People charged him with two counts of willful infliction of corporal injury on a spouse or cohabitant. (§ 273.5, subd. (a).)

The prosecution also alleged defendant had been previously convicted for burglary of a dwelling (§ 459) two times and petty theft with priors (§ 666) one time, and that those prior convictions qualify as prison priors under section 667.5, subdivision (b). The prosecution also alleged the two prior convictions for burglary of a dwelling qualify as serious or violent felonies under section 667, subdivisions (c) and (e)(2)(A), or 1170.12, subdivision (c)(2)(A).

Defendant resolved the substantive criminal counts by pleading guilty. He signed a felony plea form, which indicated, in the space set aside for the prosecutor's signature, that defendant was entering a "plea to the court." The plea form indicated defendant would receive a midterm three-year sentence on each count, doubled to six years, with the sentence on the second count to run concurrently. The plea form did not list the enhancement statutes in the section of the form set aside for admitted "charges and enhancements."

At the plea hearing, defendant pled guilty to two counts of domestic violence. Defendant agreed it was true that "on July 27th and July 28th, [he] injured [his] wife or [his] girlfriend." The court found there was a factual basis for the guilty plea and that he had knowingly and intelligently waived his rights. The trial court did not ask defendant whether he admitted he had prior convictions that constituted prison priors or prior serious or violent felonies.

At the sentencing hearing, the trial court imposed "the midterm of three years" which the court "doubled to six." On the second domestic violence count, the trial court sentenced defendant "to the midterm of three years doubled to six running concurrent."

The court did not discuss enhancements in selecting the sentences, but later explained it had doubled the sentences because defendant had a strike prior. The minute order states the court struck the three prison priors and that the case was “designated 2-Second strike pursuant to PC 667(b)-(i) inclusive or PC 1170.12.” The abstract of judgment records no enhancements.

II

DISCUSSION

Defendant contends the court sentenced him to a six-year prison term in accord with a plea agreement, but that the minute order from the sentencing hearing departed from the plea agreement by designating his conviction as a second strike.² Defendant contends he did not admit to a strike prior and he asks us to reverse the sentence and remand for a hearing to confirm his understanding of the plea agreement. The People also ask us to reverse the sentence and remand because “the plea bargain was unlawful, and the sentence is unauthorized.”

We disagree with both parties that there was a plea agreement and conclude the judgment must be reversed and the matter remanded for further proceedings because the record does not show defendant admitted prior convictions for serious or violent felonies.

² Defendant appealed the sentence in case No. 1402109 on the same basis. However, the trial court has since resentenced defendant under section 1170.18, subdivisions (a) and (b). His appeal of the sentence in that case is therefore moot. (*Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096, 1103.)

A. The Trial Court Did Not Engage in Improper Judicial Plea Bargaining.

To address defendant's contentions, we must first determine how the plea should be characterized. Defendant describes the transaction as a "plea agreement" or a "sentencing agreement." The People alternately characterize the transaction as a "plea bargain" and an "indicated sentence." According to defendant, either the agreement should be enforced or he should be allowed to withdraw his plea. According to the People, the plea agreement must be reversed as an unlawful judicial plea bargain.

Plea bargains and indicated sentences are distinct ways of resolving criminal cases without holding trials. "The process of plea bargaining which has received statutory and judicial authorization as an appropriate method of disposing of criminal prosecutions contemplates an agreement negotiated by the People and the defendant and approved by the court. [Citations.] Pursuant to this procedure the defendant agrees to plead guilty in order to obtain a reciprocal benefit, generally consisting of a less severe punishment than that which could result if he were convicted of all offenses charged." (*People v. Orin* (1975) 13 Cal.3d 937, 942.) "A plea agreement is, in essence, a contract between the defendant and the prosecutor to which the court consents to be bound. [Citation.]" (*People v. Segura* (2008) 44 Cal.4th 921, 931.) "[A] 'court has no authority to substitute itself as the representative of the People in the negotiation process and under the guise of 'plea bargaining' to 'agree' to a disposition of the case over prosecutorial objection' [citation]." (*People v. Clancey* (2013) 56 Cal.4th 562, 573 (*Clancey*).)

By contrast, “[i]n an indicated sentence, a defendant admits all charges, including any special allegations[,] and the trial court informs the defendant what sentence will be imposed. No ‘bargaining’ is involved because no charges are reduced. [Citations.]” (*People v. Allan* (1996) 49 Cal.App.4th 1507, 1516 (*Allan*).) Rather, “the trial court simply informs a defendant ‘what sentence he will impose if a given set of facts is confirmed, irrespective of whether guilt is adjudicated at trial or admitted by plea.’ [Citations.]” (*People v. Superior Court (Ramos)* (1991) 235 Cal.App.3d 1261, 1271.) “In contrast to plea bargains, no prosecutorial consent is required. [Citation.]” (*People v. Allan, supra*, at p. 1516.) The trial court retains full sentencing discretion when stating an indicated sentence, including the discretion to dismiss enhancements in the interest of justice. (§ 1385; *Clancey, supra*, 56 Cal.4th at pp. 580-581.)

““On appeal, we presume that a judgment or order of the trial court is correct, “[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.”” [Citation.]’ [Citation.] We review allegations of judicial plea bargaining for abuse of discretion.” (*People v. Labora* (2010) 190 Cal.App.4th 907, 913-914 [Fourth Dist., Div. Two].) ““Accordingly, we ask whether the trial court’s findings of fact are supported by substantial evidence, whether its rulings of law are correct, and whether its application of the law to the facts was neither arbitrary nor capricious.’ [Citation.] In examining whether the trial court improperly induced a defendant’s plea to what would otherwise be a lawful sentence, the key factual inquiries are whether the indicated sentence was more lenient than the sentence the court would have imposed following a trial and whether the court induced

the defendant's plea by bargaining over the punishment to be imposed.” (*Clancey, supra*, 56 Cal.4th at p. 578.)

The record in this case does not support the People's contention that the trial court engaged defendant in judicial plea bargaining. First, the plea form clearly indicates the September 9, 2014 transaction was a plea to the court, not a plea bargain. In criminal practice, the phrase “plea to the court” refers to a plea of guilty or nolo contendere to all of the charges, without any promises or participation by the prosecution. (See, e.g., *Liang v. Superior Court* (2002) 100 Cal.App.4th 1047, 1053 [the defendant pled nolo contendere to all charges; defense counsel described plea as “not a *People* versus *West* plea bargain involving the People at all. It was an open plea to this court”]; *People v. Cole* (2001) 88 Cal.App.4th 850, 856 [the defendant pled nolo contendere to all charges; plea form described the disposition as an ““open plea to court—no promises made””].) The plea form defendant signed indicates on its face that he would make a “plea to the court” and that the prosecutor did not consent by signing it.

Second, the plea form is consistent with defendant's “plead[ing] to the sheet”—admitting all charges and enhancements, without any promise of consideration from the prosecution. (See *People v. Marsh* (1984) 36 Cal.3d 134, 140.) The plea form indicated defendant would plead guilty to both counts against him. And though the form does not list the statutory enhancements, it does show his sentence for each count would be doubled. Because domestic violence is not considered a serious or violent felony, doubling defendant's sentence is required upon admission of two strike priors. (§ 667, subds. (e)(1) & (2)(C) [requiring a sentence to be doubled where “defendant has two or

more prior serious and/or violent felony convictions . . . and the current offense is not a serious or violent felony”].) No other allegations against defendant would have warranted doubling his sentence. Thus, it is natural to interpret the plea form as showing defendant was presented with an indicated sentence.

Third, the trial court imposed a sentence appropriate for the offenses and enhancements alleged against defendant. The trial court imposed the three-year midterm for a felony violation of section 273.5, subdivision (a). The court doubled the sentence to six years and explained it was doing so because defendant had suffered a strike prior. Finally, the record makes clear the trial court struck the prison prior allegations, which it was required to do if it enhanced the sentence for strike priors that were based on the same convictions. (*People v. Jones* (1993) 5 Cal.4th 1142, 1152-1153.) Thus, the trial court imposed a sentence predicated on the understanding that defendant had admitted all the allegations against him. The People have not pointed us to anything in the record to support the contrary conclusion that the trial court negotiated a lower sentence in return for defendant’s guilty plea, and we are aware of no such evidence.

We conclude the trial court did not engage in improper judicial plea bargaining with defendant, but entered an indicated sentence with the understanding that defendant had pled to the sheet. As a result, we conclude the minute order designating defendant’s conviction did not erroneously report the sentence the court imposed. We also conclude there is no plea agreement to be enforced.

B. The Record Does Not Support the Trial Court's Finding That Defendant Committed Prior Serious or Violent Felonies.

Defendant contends he “pled guilty to two counts of violating Penal Code section 273.5 in exchange for a stipulated six-year sentence” but “did so without admitting he was previously convicted of a strike offense.” The People concede defendant did not admit the strike prior allegations.³ We accept the People’s concession and conclude we must reverse the judgment and remand for further proceedings.

The record in this case is insufficient to uphold either the guilty plea or the sentence. The trial court’s finding was based entirely on its understanding of defendant’s guilty plea. But the plea documents and testimony are silent as to whether defendant admitted the strike priors. The plea form lists the Penal Code sections of the substantive offenses under the header “I will enter a guilty plea to the following charges and enhancements.” The plea form does not list the enhancement statutes under the same heading or in any other location. Nor did the trial court raise the enhancement statutes or the special allegations at the plea hearing. As a result of these oversights, defendant did not admit the strike priors. Absent an admission by defendant, the court’s conclusion that defendant had committed strike priors had no support. As a result, the trial court was not authorized to use the prior strikes in sentencing. (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1525-1526 [Fourth Dist., Div. Two] [“The three strikes law requires

³ The People also contend the trial court did not dismiss the strike prior allegations. As we discussed in part II A, *ante*, the court sentenced defendant on the understanding that he had committed the strike priors. Thus, there was no reason for the court to dismiss the strike prior allegations.

that a triggering prior felony conviction be pleaded *and proved*,” italics added].) Further, defendant did not plead guilty to the charges for which he was convicted. We therefore reverse the judgment as to both the conviction and the sentence and remand the matter for further proceedings.

Defendant contends we should “remand with directions to the trial court to resentence appellant in accordance with the sentencing agreement.” However, we have concluded there was no plea agreement in this case. Consequently, “there is no plea agreement to treat as a contract and specifically enforce. ‘To order *the court* to specifically perform—as distinct from a prosecutor who breaks a bargained-for promise—would ‘curtail [] the normal sentencing discretion of the trial judge. . . .’ [Citation.]’ [Citation.]” (*People v. Labora, supra*, 190 Cal.App.4th at p. 916.) In addition, there is no valid guilty plea.

On remand, the trial court may, in the exercise of its discretion, make clear it would impose the same indicated sentence if defendant pleads to the sheet. Defendant may accept the sentence by admitting his prior convictions constitute serious or violent felonies and renewing his plea of guilty to the domestic violence counts. If defendant is not willing to admit the enhancements, defendant may decline to enter a new guilty plea and proceed to trial.

III
DISPOSITION

We reverse the judgment as to both the conviction and the sentence.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

CODRINGTON
J.